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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,418	03/06/2001	Raymond Laplante	2039.008800/RFE	2558
37774	7590	05/01/2006	EXAMINER	
WILLIAMS, MORGAN & AMERSON			MULLIS, JEFFREY C	
10333 RICHMOND, SUITE 1100			ART UNIT	
HOUSTON, TX 77042			PAPER NUMBER	

1711

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

CV

<b>Office Action Summary</b>	<b>Application No.</b> 09/800,418	<b>Applicant(s)</b> LAPLANTE ET AL.	
	<b>Examiner</b> Jeffrey C. Mullis	<b>Art Unit</b> 1711	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5-8,10-14,19-21,23-36,39,40,45 and 47-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-8,10-14,19-21,23-36,39,40,45 and 47-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1711

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,5-8,10-14,19-21,23-31, 34-36,39,40,45 and 47-49 rejected under 35 U.S.C.

103(a) as being unpatentable over Cyr et al (US 6,455,620).

See the Office action of 6-1-04 at page 3, lines 4 et seq

Claims 1,5-8,10-14,19-21,23-36,39,40,45 and 47-57 are

rejected under 35 U.S.C. 102(e) as being anticipated by Yang et al. (US 6,525,123)\*.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in

the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Yang is of course the patent which issued from 09/575,094 to which applicants claim domestic priority. However, the instant claims are drawn to compositions containing combinations of polymers or oligomers of xylylene diamine with a number of oxygen barrier polymers. Yang discloses the full scope of applicants invention except that the only xylylene diamine containing material disclosed is MXD6 polymers and the only oxygen barrier for use in a composition with the scavengers is EVOH. Applicants effective filing date is therefore 9-21-00 and Yang is therefore presumed to be prior art.

Applicant's arguments filed 2-13-06 have been fully considered but they are not persuasive. With re to applicants effective filing date, applicants lower end of the range of concentration of the oxygen scavenging polymer of 1% is not in 6,525,123 and applicants effective filing date is still 9-21-00.

With re to Cyr, no claims have been rejected which exclude major amounts of oxygen scavenger not explicitly recited by the claims. Only claims drafted such as to fail to exclude other oxygen scavengers such as polyethers have been rejected over Cyr. Applicants argue that Cyr only discloses use of MXD6 as a thermoplastic but the only macromolecular materials that the claims require is EVOH and MXD6. Motivation to arrive at an invention need not be the same as that of an applicant and in any case those skilled in the art would realize that adding MXD6 as a thermoplastic as Cyr clearly suggests would result in a composition having a thermoplastic (MXD6) having oxygen

scavenging properties as Cyr discloses that MXD6 has oxygen scavenging properties in their discussion of the prior art. Patentees at column 5, lines 1-12 disclose that one or more thermoplastics named therein may be used and the number of thermoplastics recited does not require an unreasonable amount of picking and choosing given that applicants EVOH and MXD6 are amounts patentees small number of preferred thermoplastics.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis at telephone number 571 272 1075.

Application/Control Number: 09/800,418  
Art Unit: 1711


Page 5

Jeffrey C. Mullis  
J Mullis  
Art Unit 1711

JCM

4-14-06

JEFFREY C. MULLIS  
PRIMARY EXAMINER  
GROUP 1200

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a vertical line and a horizontal stroke, resembling the letters 'JCM'.